

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Application of AT&T, Inc.)	
(“AT&T” or the “Company”))	
and DIRECTV for)	MB Docket No. 14-90
Consent to Assign Licenses or)	
Transfer Control of Licensees,)	

To: The Secretary:

**NEW NETWORKS INSTITUTE & TELETRUTH
PETITION FOR INVESTIGATION INTO WHETHER AT&T COMMITTED
PERJURY IN ITS REPRESENTATIONS TO THE FCC REGARDING ITS
DEPLOYMENT OF BROADBAND AND REQUEST TO DELAY ACTION ON
THE AT&T-DIRECTV MERGER PENDING INVESTIGATION**

**Compare these three AT&T statements about broadband coverage in the company’s
22 state territory:**

AT&T-BellSouth Merger 2007 Commitment¹

“By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (i.e., Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.

¹ https://apps.fcc.gov/edocs_public/attachmatch/FCC-06-189A1.pdf At Appendix F, page 147.

AT&T's VIP Announcement, October, 2012²

“In the 25 percent of AT&T's wireline customer locations where it's currently not economically feasible to build a competitive IP wireline network, the company said it will utilize its expanding 4G LTE wireless network -- as it becomes available...”

DirecTV:³ AT&T does not provide high speed service to 15 million locations, 2015

“AT&T intends to expand its plans to build and enhance high-speed broadband service to 15 million customer locations, mostly in rural areas where AT&T does not provide high-speed broadband service today.”

MAP of AT&T, Verizon & CenturyLink⁴

Summary

This is an open and shut case. AT&T, Inc. and its affiliates, including the former BellSouth, have been engaged in a pattern of deception and violated Section 1.17 of the Communications Act of 1934:

“(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

“(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”

The AT&T-BellSouth merger required the newly combined companies to have completed deployment to 100% of their territories in 22 states with broadband capability of at least 200 Kbps in one direction by December 31st, 2007. Albeit slow, in 2007, this speed was the

² <http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661>

³ https://support.directv.com/app/answers/detail/a_id/4259/~/~directv-and-at%26t-merger-faq

⁴ <http://newnetworks.com/map-bell-companies/>

FCC's standard definition of High-speed Internet. In February 2008, AT&T filed with the FCC, signing a document (under penalty of perjury) that it had fulfilled this obligation and all other obligations that were part of the merger agreement.⁵

And yet, compare this AT&T-BellSouth merger commitment with AT&T's own statements in 2012-2015, including the previous quotes that are related to the "IP Transition" and IP Transition trial tests currently underway, as well as statements made over the course of the last decade or this year by DirecTV as part of the proposed Merger, and we find that AT&T could not have had 100% coverage in 2007. As of 2014, AT&T and DirecTV specifically claim that at least 25% of the AT&T's 22 state territories did not have broadband available or in another statement that 15 million mostly rural areas do not have broadband.

AT&T-BellSouth Merger Commitment

"Merger Commitments"

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, *as* defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.

"Promoting Accessibility of Broadband Service"

1. By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (i.e., Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory. To

⁵ <http://apps.fcc.gov/ecfs/document/view?id=6519839782>

⁷ ² As used herein, the "AT&T/BellSouth in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i). "AT&T in-region territory" means the area in which an AT&T operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i), and "BellSouth in-region territory" means the area in which a BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.”⁷

As we will show, this commitment was all make believe and AT&T’s own statements will prove this point.

And it gets worse. There has been a continuous stream of misrepresentations by AT&T (and its previous incarnations of SBC, BellSouth, et al) over the last two decades, some of which was used to create major public policy changes to the detriment of America’s communications customers.

For example, in 2002, SBC (now-AT&T) and BellSouth told the FCC that if the agency blocked competitors from using the networks (via something called “unbundling”) they would deploy fiber-to-the-home and fiber-to-the-curb (fiber optic wires within 500 feet of the location) with speeds of 100 Mbps, starting in 2004.

In fact, former FCC Chairman Michael Powell quoted these ‘commitments’ in his statements as one of the primary reasons to close the networks. Yet, they were all vaporware. Instead, AT&T pulled a bait-and-switch and rolled out U-Verse over the existing, legacy, utility, copper wires, and still confuses most people by claiming that this service is ‘fiber-based’, even though the actual fiber networks can be ½ mile from the home; over 2,500 feet away from the location.

This petition presents substantial evidence that AT&T failed to comply with its 2007 merger obligation to deploy broadband throughout its territories, and further that it made

material misrepresentations to the Commission that it had complied. AT&T has made subsequent statements to the Commission, including in this proceeding, that are inconsistent with the merger obligation that it says it met. Under these circumstances, immediate investigation is warranted, as well as a delay in any action in this proceeding pending completion of the investigation.

=====

PETITION FOR INVESTIGATION

New Networks Institute (NNI) and Teletruth file this Petition for Investigation against AT&T, Inc, and all of the other AT&T affiliate companies. This Petition is brought in the AT&T-DirecTV merger proceeding, MB Docket No. 14-90, as AT&T made willful and repeated material misrepresentations to the Commission over the last eight years that the company had fulfilled its obligations to have 100% of their 22 state territory with broadband, capable of 200 Kbps in one direction. The same misrepresentation is also true in every FCC proceeding that included any AT&T submissions pertaining to fiber optic or copper infrastructure or services utilizing those facilities, as well as all of the IP transition proceedings.

This petition is filed pursuant to Section 1.1 of the Commission's rules⁸.

⁸ §1.1 Proceedings before the Commission. The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Commission shall, unless specifically prescribed in this part, be such as in the opinion of the Commission will best serve the purposes of such proceedings.(Sec. 403, 48 Stat. 1094; 47 U.S.C. 403).

This is Misrepresentation on a Massive Level, Not Some Trivial Point.

AT&T has deceived the FCC, the courts and the public over and over, and it is time for the FCC not only to acknowledge this fact but also to start investigations into the failure of AT&T to disclose critical, material facts. Most importantly, AT&T has harmed the cities, states and customers that did not have a choice of broadband and cable providers and were upgraded over the last 8 years.

Did AT&T Commit Perjury?

Section 47 CFR 1.16 states:

“Unsworn declarations under penalty of perjury in lieu of affidavits.

Any document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person...”

We ask the FCC to start an immediate investigation into AT&T’s patently conflicting statements over the years and hold the company accountable for its deception.

How Many Customers, Communities and States have been Harmed by AT&T’s Failure to Deploy Broadband?

A detailed analysis at this time is impossible because of the paucity of actual data pertaining to AT&T’s coverage area and the actual deployments AT&T has done to date, much less by 2007. And, as we will discuss, there have been no actual surveys, audits, or any other oversight to validate AT&T’s representation that it has 100% coverage of broadband.

New Networks Institute

This next chart exposes AT&T's failure to build out its territories with fiber optics or even broadband, as legally bound by state laws and merger conditions.

In fact, the FCC's assessment that only 25% of Americans have two or more providers that can handle 25 Mbps, that 55% have one provider and the rest of the country has no providers with higher-speed-Internet can now be blamed squarely on AT&T and the other incumbent local telephone companies, Verizon and Centurylink, for not showing up and providing competition or properly upgrading their networks to offer high speed broadband. Focusing on AT&T:

AT&T Broadband Deployment & Total Housing Units, Businesses, Locations, 2015 (In the Millions)

Housing Units	62 million	
Businesses	15 million	
Locations (Premises)	77 million	
		Percentage
Video Passed	33 million	43%
Current	5.9 million	8%
Upgrade	12.5 million	16%
IP/ Broadband	57 million	74%

To Summarize:¹⁰

- AT&T covers an area with 62 million housing units and 15 million businesses for a total of 77 million locations.
- AT&T will have 33 million of these passed with U-Verse TV at the end of 2016, which will only end up being about 43% of its territories.
- AT&T's U-Verse only had 5.9 million TV customers, and a total of 12.5 million with U-Verse, according to the AT&T 2014 Annual Report — that's only 16% using the service in its territories, only 8% with TV.
- While AT&T claims to have 57 million locations passed, that represents only 74% of its territories, and this is an unaudited number.
- NOTE We are NOT talking about fiber optic deployments, as AT&T's entire U-Verse is based on the existing, aging copper wires — copper-to-the-home, not fiber to the home, and while it claims to be 'fiber-optic based', the wire can be within ½ mile of the location.

AT&T 2014 SEC 10K¹¹

“U-verse Services During 2014, we continued to expand our offerings of U-verse high speed Internet and TV services. As part of Project Velocity IP, we announced a goal to expand our IP-broadband service to approximately 57 million customer locations and we achieved that goal during 2014. As of December 31, 2014, we had 12.5 million total U-verse subscribers (high-speed Internet and video), including 12.2 million Internet and 5.9 million video subscribers (subscribers to both services are only counted once in the total).”

This chart details that AT&T never showed up in the majority of its state territories, and that the company committed perjury in February 2008 when it claimed it had 100% coverage with broadband.¹² The 74% coverage is as of December 2014; thus it couldn't

¹⁰ The housing units and businesses breakouts were created using Census information by state, then cross referenced with the FCC's *Statistics of Common Carriers* data on Bell company USF lines by state for 1996, prior to the Bell mergers, through 2007, the last data the FCC published; and we compensated for the Verizon- GTE territories in an AT&T state. All of the other data points are identified in actual AT&T quotes or data from the company's annual or quarterly SEC filed reports.

¹¹ http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm

¹² <http://apps.fcc.gov/ecfs/document/view?id=6519839782>

New Networks Institute

have had 100% by 2007 as “IP or broadband” would be required to deliver even the pitifully slow amount of 200 Kbps in 1 direction.

NOTE: The AT&T-BellSouth commitment allowed for 15% of customers to be handled by wireless, but according to current filings, the company will cover only 70 million, even with wireless in their territories if the merger goes through, leaving at least 9% without broadband. And this number is worse if the 25 Mbps standard is applied as wireless and satellite do not deliver these speeds in most of the US and wireless would be too expensive to be a competitor, especially to cable service, as it charges by the gigabit.

The Petitioners

New Networks Institute and Teletruth are no stranger to the FCC. We have collectively filed more than 70 occasions, including having our own pages at the FCC for our Data Quality Act complaints. As Teletruth we served on the FCC’s Consumer Advisory Committee in 2003-2004. Nationwide, Teletruth has acted as a leading advocacy group in telecommunications, having helped to establish multiple, successful, settled class action suits, and with our communications auditing group, Teletruth helped to recover over \$35 million in customer overcharging. In 2002, we worked with the Small Business Administration’s Office of Advocacy to create a Small Business Telecom Summit, and worked with Congressmen Nadler’s office to create proposed legislation, “The Broadband Bill of Rights”.

We advocate for AT&T customers who continue to be harmed in several ways by AT&T’s material misrepresentations to the FCC.

Conclusion

New Networks and Teletruth by this petition have presented substantial evidence that AT&T did not comply with the broadband deployment conditions in the 2007 merger order and made material misrepresentations to the Commission under oath that it had fulfilled its obligations. Subsequent statements by AT&T to the Commission, including in this proceeding, directly contradict its February 2008 representation that it had complied with the 2007 broadband deployment condition. The facts presented require immediate investigation into AT&T's material misrepresentations and perjury and delay of Commission action in this proceeding pending completion of the investigation. Petitioners believe that the results of the investigation will warrant denial the AT&T/DirectTV application and sanctions against AT&T.

Respectfully submitted,

Bruce Kushnick, Executive Director, New Networks Institute

bruce@newnetworks.com

Tom Allibone, President, LTC Consulting, Director of Audits, Teletruth

tom@teletruth.org

May 12th 2015

APPENDIX 1: SUPPORTING FACTS

Preamble: A Long History of “Say Anything”.

The following is a partial list of the ‘video dialtone’ applications filed with the FCC by what is now AT&T, from 1993-1995. This list shows that the ‘Bell Companies’ had plans to upgrade major cities with fiber optic wires that replaced the incumbent, utility, copper-based, phone wires. Major cities, like Chicago and San Francisco, should have received fiber optic video and cable services by the year 2000.

Partial List of Now-AT&T Video Dialtone Applications by the Phone Companies

Date	Company	Location	Homes
12/15/93	SNET	Hartford & Stamford, CN	150,000
12/20/93	Pacific Bell	Orange Co., CA	210,000
12/20/93	Pacific Bell	So. San Francisco Bay, CA	490,000
12/20/93	Pacific Bell	Los Angeles, CA	360,000
12/20/93	Pacific Bell	San Diego, CA	250,000
01/31/94	Ameritech	Detroit, MI	232,000
01/31/94	Ameritech	Columbus & Cleveland, OH	262,000
01/31/94	Ameritech	Indianapolis, IN	115,000
01/31/94	Ameritech	Chicago, IL	501,000
01/31/94	Ameritech	Milwaukee, WI	146,000
06/27/94	BellSouth	Chamblee & DeKalb s, GA	12,000
04/28/95	SNET	Connecticut	1,000,000

On top of this there were both federal announcements in the companies’ annual reports as well state alternative regulation plans that were part of larger picture.

- ☐ SNET, Connecticut was to have 1 million lines with the entire state done by 2007 and SNET would spend \$4.5 billion.
- ☐ Pacific Bell, California was to spend \$16 billion by 2000 on 5.5 million lines.

- Ameritech was to have 6 million households deployed by 2000, and each state had its own spending requirements.

There was a catch — state laws were changed to fund these fiber optic replacements of the aging copper infrastructure, charging local phone customers billions per state.

Too long to detail here, the FCC never investigated the fact that the companies failed to deploy the networks, but still collected and charge phone customers billions per state, including major tax deductions from depreciation, etc. The FCC also erased the original history of broadband, especially about the speed of services. Broadband was defined in multiple states as 45 Mbps in both directions. In 1999, in the first Advanced Network Services Section 706 Report, the FCC reduced the speed to inflate the number of actual users to 200 Kbps in 1 direction.

In short, our Petition is based on a continued history of broken broadband commitments, and the BellSouth-AT&T merger, where the company had written requirements and was able to not fulfill them but claim otherwise, was simply a corrupted ‘business as usual’.

For details see: *“The Book of Broken Promises; \$400 Billion Broadband Scandal & Free the Net”*¹⁴

The Mergers Harmed Broadband and Competition.

- AT&T is comprised of SBC, Pacific Telesis, SNET (not an original Bell company, but independent), Ameritech, AT&T and BellSouth.

Moreover, it is clear that the FCC simply rubber stamped the phone company mergers and never tracked the outcomes of these mergers.

¹⁴ <http://newnetworks.com/bookbrokenpromises/>

New Networks Institute

SBC would lead the charge to merge with its siblings. But it was a ugly mess; while the company got larger, in merger after merger, right after the ink was dry, SBC would shut down anything that was being built and never had to refund the billions collected, or was held accountable for the construction.

Tying it to the previous broadband commitments:

- SBC merged with Pacific Telesis in 1996 and in 1997 closed down the plans for spending \$16 billion as well as closed down anything that had been started on the wiring of homes with fiber optics, (which wasn't much).
- SBC merged with SNET in 1998. SNET had started to deploy a fiber-coax network and used it originally for cable service. Within a few years, SBC closed down this network. However, SNET had actually started its fiber deployments and competitors wanted to use these networks; SBC not only blocked the competitors by as far as we can tell, abandoned the networks.
- SBC, (which now included Pacific Telesis and SNET), merged with Ameritech in 1999. SBC committed to competing out-of-region in 30 cities by 2002 (using 'unbundling', i.e. renting the wires from the other companies) and was to spend \$6 billion on Pronto. The fine print allowed for '3 unaffiliated customers' to fulfill any out-of-region obligation — that's 3 customers per city. Ameritech had also rolled-out fiber-optic cable services. SBC sold it off to "WOW", even though they had told the FCC they were 'deploying fiber optics'.

SBC never competed for wireline residential service, stopped all fiber optic deployments in every city, yet, SBC would be able to fool the FCC in 2004.

1) Lawlessness: AT&T & BellSouth Continually Made Misrepresentations to the FCC.

Fiber Optic-Bait-and-Switch

In 2005, SBC merged with AT&T, which had been a long distance company from 1984-2004, then changed its name to AT&T. And in 2006, AT&T merged with BellSouth.

Regardless of the previous mergers, this period reveals a case of regulatory capture and lawlessness that has had massive consequences over the last decade. SBC continually used the promise of fiber optic broadband-to-the-home to get regulations changed or mergers pushed through. In this case, SBC made commitments that they would be deploying 100 Mbps services, fiber-to-the-home, starting in 2004, if the laws were changed to block competitors from using the networks and the obligations, known as “unbundling”, erased; obligations that had been fought over for years and ended up becoming law with the Telecommunications Act of 1996.

In 2004, then FCC Chairman Michael Powell based his decision to close the networks to direct competition (which caused Net Neutrality concerns), on AT&T’s (then SBC and BellSouth), commitments to deliver fiber-to-the-home services and fiber-to-the-curb with 100 Mbps speeds.

Powell writes, October 2004:¹⁵

“In my separate statement to the *Triennial Review Order* and in countless other statements during my seven years at the Commission, I have emphasized that ‘broadband deployment is the most central communications policy objective of our day’. Today, we take another important step forward to realize this objective.... By removing unbundling obligations for fiber-based technologies, today’s decision holds great promise for consumers, the telecommunications sector and the American economy. The networks we are considering in this item offer speeds of up to 100 Mbps and exist largely

¹⁵ Separate Statement of Chairman Michael K. Powell. October 22nd, 2004
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253492A2.doc

where no provider has undertaken the expense and risk of pulling fiber all the way to a home.

“SBC has committed to serve 300,000 households with a FTTH network while BellSouth has deployed a deep fiber network to approximately 1 million homes. Other carriers are taking similar actions.” (Emphasis added)

- **“FTTH” — “Fiber to the Home”**, where the fiber optic wire starts at the customer’s location.
- **“FTTC” — “Fiber to the Curb”**, is defined as 500 feet from a customer’s home.

"In granting such relief, we first define FTTC loops. Specifically, a FTTC loop is a fiber transmission facility connecting to copper distribution plant that is not more than 500 feet from the customer’s premises."¹⁶

Meanwhile, in a press release dated June 2005, BellSouth and TellLabs wrote that FTTC networks would be going to 1.1 million homes, and it specifically states it was “fiber optic access up to the last 500 feet”.¹⁷

“Tellabs Selected by BellSouth for Next-Generation Fiber to the Curb Broadband Network.

“BellSouth passes approximately 1.1 million homes with FTTC and has approximately 5.3 million miles of fiber within its network. With the Tellabs FiberDirect solution service providers **like BellSouth can cost-effectively provide homes and businesses with fiber access up to the last 500 feet**, without sacrificing service offerings. This ability enables service providers to deliver broadband services, such as Voice over IP (VoIP) and high-speed Internet access, over a single platform.” (Emphasis added)

¹⁶ http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-248A1.pdf

¹⁷ <http://www.prnewswire.com/news-releases/tellabs-selected-by-bellsouth-for-next-generation-fiber-to-the-curb-broadband-network-67011892.html>

Then, in the AT&T-BellSouth merger, we find that there is supposed to be 175,000 households with **fiber to the premises**.

“AT&T is undertaking a controlled launch of the U-verse video service in San Antonio, Texas, and is moving toward a roll-out to multiple geographic areas, reaching approximately 2.7 million households this year, which includes 2.5 million households served by fiber to the node and a forecasted **175,000 households served by fiber to the premises**. By the end of 2008, AT&T expects that U-verse will be available to approximately 18 million households in its 13-state region as part of its initial deployment.” (Emphasis added)

However, this contradicted what the companies had told the FCC in their Triennial Review filings; that there would be 300,000 fiber-to-the-home households starting in 2004, and 1 million ‘deep fiber networks’ that were fiber-to-the-curb, only 500 feet from the house.

But in a footnote in the AT&T-Bellsouth merger Public Interest Statement¹⁸ we see that it was all smoke and mirrors; BellSouth never built out the networks — ever, and in 2006 and 2007 there would only be “limited commercial trial to 1000 homes”.¹⁹

“Although BellSouth has not made any decisions at this time regarding a commercial launch of IPTV, any decision to proceed will depend on the results of continued testing and trials, a full assessment of the business opportunity of IPTV, and getting the right regulatory structure in place... After initiating a limited technical trial in August 2005, BellSouth began an expanded technical trial to approximately 280 homes in December 2005 and plans to start a **limited commercial trial to approximately 1000 homes in late 2006 to run through 2007.**” (Emphasis added)

¹⁸ 3/31/06 “Description of Transaction, Public Interest Showing and Related Demonstration” <http://apps.fcc.gov/ecfs/document/view?id=6518332548>

¹⁹ See In re Implementation of Section 621(a)(1) of the Cable Commc’ns Policy Act of 1984, as amended by the Cable Television Consumer Protection & Competition Act of 1992, Comments of BellSouth Corporation and BellSouth Entertainment, LLC, MB Docket No. 05-311, at 21 n.24 (Feb. 13, 2006)

“Decl. ¶¶ 7-9. Today BellSouth provides MVPD service via cable ‘overbuild’ to approximately 40,000 customers in 14 localities (in three states) but has no plans to expand its video service using that technology platform. *Id.* ¶ 59.”

So that the Subtly Is Not Lost on the Reader: This Is a Bait & Switch. AT&T never deployed fiber-to-the-home or fiber-to-the-curb in any quantity starting in 2004. It was always ‘fiber to the press release’ or ‘fiber to the regulatory favor’.

Worse, the AT&T-BellSouth merger only required 200 Kbps in 1 direction, which was the speed of broadband as defined by the FCC to keep the standard so low that two-cans-and-string could be counted as ‘high-speed’.

Even 200 Kbps was too Hard for AT&T to Deploy and Fulfill Their Merger Commitments.

2) AT&T made written commitments to have 100% of their 22 state territories capable of 200 Kbps in 1 direction by the end of 2007 as part of the merger of AT&T and Bellsouth.

To repeat: Merger documents:²⁰

“By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (i.e., Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory. To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the “Wireline Buildout Area”). AT&T/BellSouth will make available broadband

²⁰ <http://transition.fcc.gov/transaction/att-bellsouth.html>

Internet access service to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.”

- 3) AT&T filed an Annual Compliance Certification, Feb 6th 2008.²¹

“In accordance with the voluntary commitments set forth in Appendix F of the Commission’s Memorandum Opinion and Order in WC Docket No. 06-74, In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control (“AT&T/BellSouth Merger Order”), attached please find the declaration of AT&T’s Corporate Compliance Officer attesting that AT&T has substantially complied with the terms of these conditions in all material respects.

“AT&T also notes that paragraph 1 of the "Promoting Accessibility of Broadband Service" commitment required AT&T to complete certain actions by December 31, 2007. These actions were in fact completed by AT&T on or before December 29, 2007. Similarly, the "Statement of Video Roll-Out Intentions" commitment required AT&T to provide a written report to the Commission by December 31, 2007. AT&T filed the report with the Commission on December 20, 2007.”

- 4) This next excerpt clearly shows that AT&T knowingly signed documents where the company claims it completed its deployment on time, February, 2008, under penalty of perjury.²²

²¹ <http://apps.fcc.gov/ecfs/document/view?id=6519839782>

²² <http://apps.fcc.gov/ecfs/document/view?id=6519839782>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on my information and belief.

Executed on February 5th, 2008



Carol Tacker
Senior Vice President-Compliance
AT&T Inc.

¹ AT&T previously informed Commission staff of four incidents that occurred during this period which relate to the Merger Conditions but which, in AT&T's view, do not constitute material instances of non-compliance with the Merger Conditions. Further information concerning these incidents is provided in Attachment A hereto. AT&T also notes that paragraph 1 of the "Promoting Accessibility of Broadband Service" commitment required AT&T to complete certain actions by December 31, 2007. These actions were in fact completed by AT&T on or before December 29, 2007. Similarly, the "Statement of Video Roll-Out Intentions" commitment required AT&T to provide a written report to the Commission by December 31, 2007. AT&T filed the report with the Commission on December 20, 2007.

- 5) Commitments were enforceable, not "voluntary".

"For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, *as defined herein*,"

By the Numbers:

The following quotes reveal that AT&T never had 77 million locations upgraded to broadband, especially not in the time in question, by the year ending December 31st, 2015.

- 6) AT&T filed a document outlining the status of U-Verse, which only began to be deployed in the beginning of 2007.

"At the beginning of 2007, AT&T had passed approximately 2.1 million living units in AT&T's 13-state territory with its U-verse network, and had approximately 3,000 U-verse customers in service. By the end of third quarter of 2007, these numbers had grown to 5.5 million and 126,000 respectively. As of the date of this report, AT&T was providing U-verse service in 35 markets in its 13-state in-

region territory, and U-verse installations were exceeding 10,000 per week. “

- 7) The AT&T 2007 Annual Report states that the company had 4 million customers capable of getting services and being market to. (50% of 8 million living units).

“As of December 31, 2007, we have passed approximately 8 million living units (constructed housing units as well as platted housing lots) and are marketing the services to almost 50 percent of those units”.

- 8) AT&T's 2007 Annual report only shows **14 million broadband connections:**

“Broadband connections include in-region DSL lines, in-region U-verse high-speed Internet access and satellite broadband.”

NOTE: We would assume that satellite would be more rural and that DSL and U-Verse would be in the same geographic coverage areas. 9 million DSL customers as of 2006. There are no ‘households passed for broadband’ supplied in the annual report.

- 9) In 2012, AT&T gave statistics that 20% will not receive any wired broadband service, and that AT&T would stop any future U-Verse upgrades.

DSL Reports writes:²³

“AT&T's Stankey: U-verse Build Virtually Over Company Comments Suggest Build Ends at 55-60% of Homes”

“AT&T is scheduled to reach 30 million U-verse homes passed by the end of the year with their U-Verse service, or roughly 55-60% of their homes. They will virtually stop there according to President John Stankey speaking at Citibank, who announced 55-60% as their ultimate goal. He suggested that 25-30% of AT&T homes will only be offered ADSL. 20% are "not a heavy emphasis for investment," i.e. 5-10 million of AT&T's 50 million homes are screwed unless they have a decent cable alternative. (Yes,

²³ <http://www.dslreports.com/shownews/ATTs-Stankey-Uverse-Build-Virtually-Over-114279>

rounding means not necessarily equal to 100%.) In November 2012, AT&T filed a petition to close down the PSTN claims that 25% of their territories still have no broadband capability -- and that it will reach this goal by 2016 assuming the FCC grants the petition.”

10) No Plans for Rural Areas in 2012

Stop the Cap’s analysis and quotes of AT&T’s CEO Randall Stephenson captured the plight of rural AT&T customers, but confirmed that in 2012, AT&T did not have 100% coverage of broadband in their 22 states.²⁴

“Speaking on an investor’s conference call to discuss 4th quarter earnings results, AT&T CEO Randall Stephenson announced the expansion of its fiber to the neighborhood service is now effectively over.

‘Our U-verse build is now largely complete, so we have in place an IP video and broadband platform that reaches 30 million customer locations, which gives us significant headroom now to drive penetration,’ Stephenson said.

In practical terms, Stephenson’s announcement means AT&T will continue work on building its U-verse platform in cities where the service is already available, but other areas are unlikely to see an introduction to the service anytime soon. AT&T President John Stark originally envisioned U-verse for 30 million homes and that vision remains unchanged today.

AT&T’s news for its rural customers is worse. The company admits it has run out of ideas how to provide rural broadband to its landline customers.

‘We have been apprehensive on moving, doing anything on rural access lines because the issue here is, do you have a broadband product for rural America?’ Stephenson said. ‘And we’ve all been trying to find a broadband solution that was economically viable to get out to rural America and we’re not finding one to be quite candid.’

If you can buy it at any price.

²⁴ <http://stopthecap.com/2012/02/08/at-atts-rural-broadband-solution-we-dont-have-one/>

Stephenson was hoping LTE 4G wireless service could provide a rural broadband solution, a central theme in AT&T's lobbying campaign for a buyout of T-Mobile, since abandoned.

'That having been set aside, now we're looking at rural America and asking, what's the broadband solution? We don't have one right now,' Stephenson said.

"Stephenson earlier told a July meeting of the National Association of Regulatory Utility Commissioners that DSL, the most common form of broadband in rural America, was 'obsolete'."

AT&T "VIP" Plan Announcements

11) More Broadband Hype.

"AT&T to Invest \$14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services: Improved Capital Structure is Foundation for Investment and Accelerated Growth" November 07, 2012

In 2012, as part of AT&T's "IP Transition", an attempt to merge with T-Mobile, and now with DirecTV, AT&T created "VIP".

- AT&T Petition²⁵
- Press Release²⁶

By 2016, AT&T will have 75% coverage of their territory with wireline broadband and 100% of the rest will be supplied by wireless.

Investing in Wireline IP Network Growth, November 2012²⁷

"AT&T plans to expand and enhance its wireline IP network to 57 million customer locations (consumer and small business) or 75 percent of all

²⁵ http://www.att.com/Common/about_us/files/pdf/fcc_filing.pdf

²⁶ <http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661>

²⁷ <http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode=>

customer locations in its wireline service area by year-end 2015. This network expansion will consist of:

- U-verse. AT&T plans to expand U-verse (TV, Internet, Voice over IP) by more than one-third or about 8.5 million additional customer locations, for a total potential U-verse market of 33 million customer locations¹. The expansion is expected to be essentially complete by year-end 2015.
- U-verse IPDSLAM. The company plans to offer U-verse IPDSLAM service (high-speed IP Internet access and VoIP) to 24 million customer locations in its wireline service area by year-end 2013.
- Speed Upgrades. The Project VIP plan includes an upgrade for U-verse to speeds of up to 75Mbps and for U-verse IPDSLAM to speeds of up to 45Mbps, with a path to deliver even higher speeds in the future.

But the significant summary: The company doesn't have 25% upgraded with broadband.

“In the 25 percent of AT&T’s wireline customer locations where it is currently not economically feasible to build a competitive IP wireline network, the company said it will utilize its expanding 4G LTE wireless network -- as it becomes available -- to offer voice and high-speed IP Internet services.” (Emphasis added).

And it will not be offering these customers a ‘wired’ solution but a wireless, more expensive solution.

“The company’s 4G LTE network will cover 99 percent of all in-region customer locations. AT&T's 4G LTE network offers speeds competitive with, if not higher than, what is available on wired broadband networks today. And in many places, AT&T's 4G LTE service will be the first high speed IP broadband service available to many customers.”

Statements Made about the AT&T DirecTV Proposed Merger.

12) DirecTV:²⁸ AT&T does not provide high-speed broadband service to 15 million today.

“AT&T intends to expand its plans to build and enhance high-speed broadband service to 15 million customer locations, mostly in rural areas where AT&T does not provide high-speed broadband service today.

²⁸ https://support.directv.com/app/answers/detail/a_id/4259/~/-directv-and-at%26t-merger-faq

This new commitment is on top of the fiber and Project VIP broadband expansions plans AT&T has already announced.”

13) *The Wall Street Journal*.²⁹ 13 million people currently have limited or no access.

“On Tuesday, AT&T Inc. CEO Randall Stephenson will argue at a House Judiciary Committee hearing that its proposed \$49 billion takeover of DirecTV will bring broadband options to at least 13 million people who currently have limited or no access to the service in rural areas.”

“While rural areas have phones, they often don’t have the ability to get high-speed internet or high quality wireless coverage and the cost of connecting them can make it a low priority for service providers.”

14) AT&T³⁰ will cover 70 million locations after the merger is completed.

“AT&T has a best-in-class nationwide mobile network and a high-speed broadband network that will cover 70 million customer locations with the broadband expansion enabled by this transaction.”

15) AT&T³¹ will add 15 million locations.

“With the benefits of the transaction, AT&T is able to commit to do the following, when the deal closes:

“15 Million Customer Locations Get More High Speed Broadband Competition. AT&T will use the merger synergies to expand its plans to build and enhance high-speed broadband service to 15 million customer locations, mostly in rural areas where AT&T does not provide high-speed broadband service today, utilizing a combination of technologies including fiber to the premises and fixed wireless local loop capabilities. This new commitment, to be completed within four years after close, is on top of the fiber and Project VIP broadband expansion plans AT&T has already announced. Customers will be able to buy broadband service stand-alone or as part of a bundle with other AT&T services.

²⁹ <http://blogs.wsj.com/corporate-intelligence/2014/06/23/att-pushes-rural-service-expansion-in-directv-deal/>

³⁰ http://about.att.com/story/att_to_acquire_directv.html

³¹ Ibid.

“Stand-Alone Broadband. For customers who only want a broadband service and may choose to consume video through an over-the-top (OTT) service like Netflix or Hulu, the combined company will offer stand-alone wireline broadband service at speeds of at least 6 Mbps (where feasible) in areas where AT&T offers wireline...”

16) AT&T, IP Transition Test Trial Area: Carbon Hill Alabama

AT&T writes that there are areas where they have no current solution, even with wireless products:³²

"The living units in the "IP Wireline Red and IP Wireless Red" category will not have an IP-based alternative available from AT&T. AT&T continues to consider options for these living units."

And then they supply this chart and redacted information to reassure us that we should 'trust them'.

End of Year 2015							
Serving Wire Center	Total Wire Center LUs	IP Wireline Green		IP Wireline Red/IP Wireless Green		IP Wireline Red/IP Wireless Red	
		LUs	% Total LUs	LUs	% Total LUs	LUs	% Total LUs
Carbon Hill	4,388						
Kings Point	49,712						

3.5.1. Carbon Hill. As of December 2013, AT&T provides wireline retail services to [CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE]¹⁷ in the Carbon Hill wire center out of a total of 4,388 living units in the wire center to which it offers wireline services. [CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE] percent of the Carbon Hill living units will have a wireline IP-based alternative to TDM-based services available from AT&T by the end of 2015. [CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE] percent will have at least one IP-based alternative available—wireline, wireless or both. AT&T has not yet found a viable replacement service for the [CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE] percent of living units, and still is considering its options for those living units.

³²http://connected.att.com/external/PublicPolicyViewsNews/As_Filed_Redacted_Wire_Center_Trial_Plan.pdf

And even in this trial, AT&T hasn't figured out how to serve 4%. Does this mean that AT&T never upgraded this 4%, even though under the AT&T-BellSouth commitment was for 100%? (Carbon Hill Alabama is an AT&T IP transition trial site.)

These factors make it uneconomic for AT&T to extend its next generation wireline broadband network and services to all existing customer locations in Carbon Hill. Consequently, AT&T currently plans to offer such wireline IP services to approximately **[CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE]** percent of living units in Carbon Hill. It will offer its wireless broadband voice and data services only to an additional **[CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE]** percent of living units. AT&T has not yet found a viable replacement service for the remaining four percent of locations, and still is considering its options for those living units.

17) No Serious Available Data and Audits

The problem is simple — The statements made in 2012-2015 do not match the commitments made in 2007. Moreover:

- ☐ We could find no audits by either the states or the FCC that the company actually had fulfilled this and other commitments.
- ☐ We found 1 presentation by AT&T in North Carolina claiming compliance³³.
- ☐ We found no other state presentation by AT&T or any audit in any other state.
- ☐ The FCC's broadband data combines all carriers and doesn't supply 'households passed'.
- ☐ Blended Data from AT&T — *Fierce Telecom's* headline reads "AT&T pushes for "100 percent broadband" by 2014" , but this 2009 article shows that AT&T's statements relate to all of America's phone, cable, and wireless companies.³⁴
- ☐ This report from the Florida Public Service Commission quotes the FCC's data, but is not granular enough nor gives a break out by phone and cable company.³⁵

³³ <http://www.ncleg.net/DocumentSites/Committees/HSCHSIRA/04-08-2008/AT&T%20presentation.pdf>

³⁴ <http://www.fiercetelecom.com/story/t-pushes-100-percent-broadband-2014/2009-06-09>

“Florida Broadband Trends: In Florida, 42 percent of households have a fixed broadband connection with download speeds of at least 3 Mbps and 73 percent of households have fixed broadband connections of 200 kbps or greater, according to the most recent FCC report. The FCC also reported that cable modem service accounts for 56 percent of non-mobile broadband connections in Florida with download speeds greater than 200 kbps. Mobile broadband connections account for 54 percent of all Florida broadband connections with download speeds in excess of 200 kbps.”

- Confusion and a lack of data. Only a few states collect data — many do it through “Connected Nation” which has been funded by AT&T et al. And they claim that the data is proprietary. Tennessee wrote:³⁶

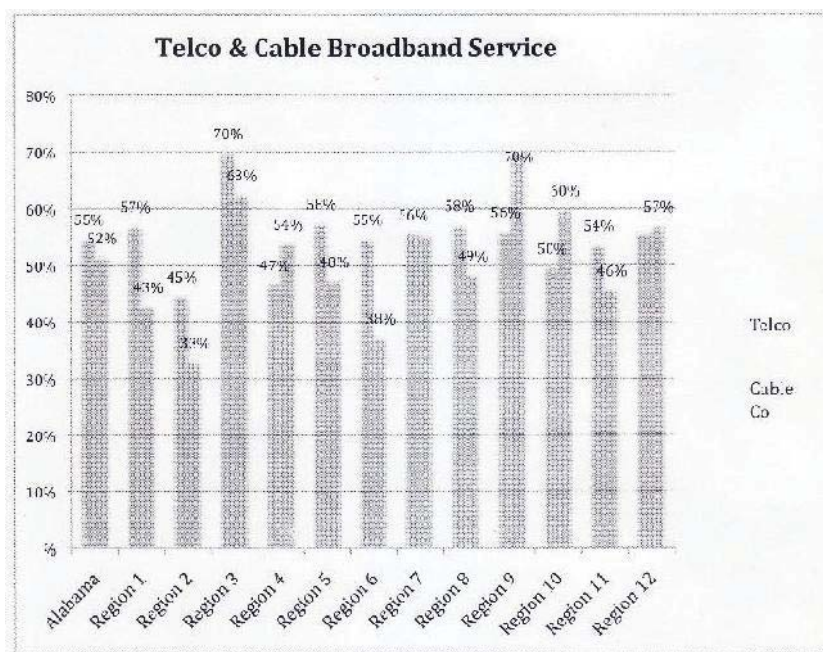
“Industries were to provide baseline information without divulging proprietary information. Nevertheless, the information provided to the Task Force leads to the same conclusion reached by the GAO in its May 2006 report – there is significant deployment of broadband in urban areas, but assessment of deployment in rural areas is difficult. The first step in improving deployment is to establish a baseline, which this Task Force has been unable to accomplish.”

- We found some states had conducted surveys and none showed 100% coverage, or the 85% coverage of wired services — by AT&T et al.

³⁵ http://www.docstoc.com/docs/150357882/heading-level-one-_chapter-headings_---Public-Service-Commission

³⁶ <http://www.state.tn.us/tra/bbtaskforce/Tenn.%20Broadband%20Task%20Force%20Report%20and%20Recommendations.pdf>

Example: The State of Alabama³⁷



CONCLUSION:

New Networks Institute & Teletruth Petition the FCC to Investigate Whether AT&T Committed Perjury in Its Representations to the FCC Regarding Its Deployment of Broadband and We Request a Delay to any Action on the AT&T-DirecTV Merger Pending an Investigation.

³⁷http://www.alabamadaashboard.org/sites/default/files/2011AL_Consumer_BB_Market_ResearchReport_v4_15_12.pdf